

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Engineering

AGENDA DATE: May 17, 2005

CONTACT PERSON/PHONE: Rick Conner, P.E., City Engineer Ext. 4423/Bashar Abugalyon, P.E.,  
Chief Development Engineer Ext. 4157

DISTRICT(S) AFFECTED: 5

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Tierra Del Este Unit 27 Subdivision-obtain permission from the City Council for a Conditional "B" permit as per Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits, see attached Letter from Ranchos Real IX, Ltd., owner and developer for Tierra Del Este Unit 27 Subdivision.

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

Not for this subdivision

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

CITY CLERK DEPT.  
MAY 17-9 PM 1:39

Date: May 5, 2005

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:  
May 17, 2005.

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:

Tierra Del Este Unit 27 Subdivision (District 5)

Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION  
CONTACT BASHAR ABUGALYON, P.E., CHIEF DEVELOPMENT ENGINEER  
EXT. AT 541-4157.

City Clerk's Use

Action Taken: \_\_\_\_\_ Item No. \_\_\_\_\_

## ENGINEERING DEPARTMENT

### Development Division

DATE: May 4, 2005  
TO: Mayor & City Council  
FROM: Bashar Abugalyon, P. E., Chief Development Engineer ~~BA~~  
SUBJECT: Conditional "B" Building Permits  
Tierra Del Este Unit 27 (District 5)

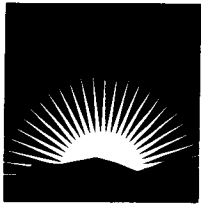
The above referenced request is scheduled for City Council Regular Agenda on May 17, 2005. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be issued until all of the improvements affecting that lot have been completed and approved by the City.

Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the sub-divider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.



## RANCHOS REAL IX, LTD.

April 21, 2005

Bashar Abugalyon, P.E.  
Engineering Section Chief  
City of El Paso Engineering Dept.  
2 Civic Center Plaza  
El Paso, Texas 79901

Re: Tierra Del Este Unit 27

Dear Bashar:

Ranchos Real IX, Ltd., the owner and developer of Tierra Del Este Unit 27 is respectfully requesting the approval of Condition "B" building permits for this subdivision.

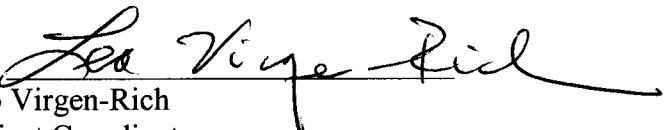
All of the subdivision improvements have been completed except for paving on Pebble Hills Blvd. Request for street improvement acceptance is being prepared and is expected to be submitted to the City of El Paso by May. Development agreements for this subdivision are filed with the County Clerk's Office and enclosed with this request.

The need for requesting Conditional "B" Permits is to allow the home builder to fulfill contract obligations for pre-sale contracts signed for this subdivision. Not meeting the delivery dates set on the contracts would constitute a hardship to the homebuilder due to breach of contract.

Please call us should you have any questions.

Respectfully,

RANCHOS REAL IX, LTD.

By:   
Leo Virgen-Rich  
Project Coordinator

sm

Enclosures

**Arath Homes, Inc. – No Agreement**

Lots 5, 6, 7, Block 117

**BIC Homes, LLC – Agreement in Process**

Lot 1-4, Block 117

Lot 1, Block 118

**Diamond Homes – No Agreement**

Lots 30 & 31, Block 112

**Direct Home Sales, Inc. – Attached**

Lots 2, 3, 23-37, Block 110

Lots 1-5, 30-43, Block 115

Lots 1-24, Block 116

**Edward's Homes, Inc. – Agreement in Process**

Lots 5-9, Block 118

**CJ Homes, LLC – Agreement in Process**

Lots 1-11, Block 117

**Mencer Homes, Inc. – Attached**

Lots 10-12, 26 & 27, Block 112

**Mountain Vista Builders, Inc. – Attached**

Lots 4-10, Block 110

Lots 1-18, Block 111

Lots 16-25, Block 112

**Pacifica Homes, Inc. – Attached**

Lots 1-6, Block 113

**Peinado Family Limited Partnership d/b/a Quality Craft Homes – Attached**

Lots 4-6, Block 114

Lots 2 & 3, Block 118

**RAKMR I, Ltd. – Agreement in Process**

Lots 12-20, Block 109

Lots 11-22, Block 110

Lots 1-9, 13-15 and 32-41, Block 112

Lots 14-21, Block 113

Lots 6-14, Block 115

**Southwestern Classic Homes, Inc. – Agreement in Process**

Lots 28 & 29, Block 112

Lots 2 & 3, Block 114

**Taylor Homes, Inc. – No Agreement**

Lot 7, Block 113

Lot 7, Block 114

Lots 12 & 13, Block 117

Lot 4, Block 118

**Xavier Homes, Inc. – Attached**

Lots 38-41, Block 110

**Zia Homes, Inc. – Attached**

Lots 1-11, Block 109

Lots 8-13 & 22-24, Block 113

Lots 15-29, Block 115

400819  
105/MB  
3 pgs

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 20th day of January, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **DIRECT HOME SALES, INC.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

APPLICANT:

DIRECT HOME SALES, INC.

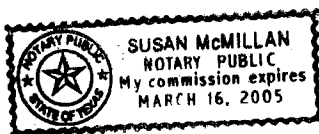
By: Timothy C. Foster  
Timothy C. Foster, Vice President

By: James P. Sorenson, Jr.  
James P. Sorenson, Jr., President

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on this 20<sup>th</sup> day of January, 2005, by TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas corporation, on behalf of said corporation.

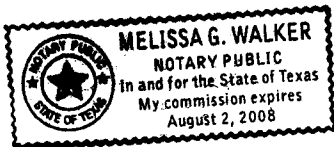
Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS





STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 25<sup>th</sup> day of January, 2005, by JAMES P. SORENSON, JR., President of DIRECT HOME SALES, INC., a Texas corporation, on behalf of said corporation.



Melissa G. Walker  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 21st day of January, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **MENCER HOMES, INC.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

APPLICANT:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

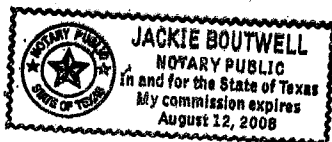
MENCER HOMES, INC.

By: Timothy C. Foster  
Timothy C. Foster, Vice President

By: Alberto Rojas  
Alberto Rojas, President

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

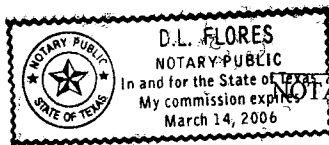
This instrument was acknowledged before me on this 21st day of January, 2005, by TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas corporation, on behalf of said corporation.

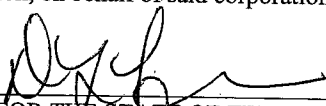


Jackie Boutwell  
NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 27 day of January, 2005, by ALBERTO ROJAS, President of MENCER HOMES, INC., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

U.S. 05-26-1110  
#106 3 pages  
③  
Doc# 20050010313

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 31st day of January, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **MOUNTAIN VISTA BUILDERS, INC.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

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  - (c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.
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ORIGINAL

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

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6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

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This Agreement is executed to be effective on the date and year first set forth above.

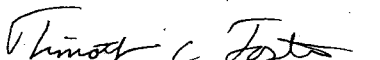
DEVELOPER:

APPLICANT:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

MOUNTIAN VISTA BUILDERS, INC.

By:



Timothy C. Foster, Vice President

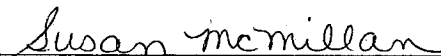
By:

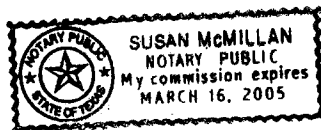


Ed Santamaria, President

STATE OF TEXAS     )  
                                  )  
COUNTY OF EL PASO    )

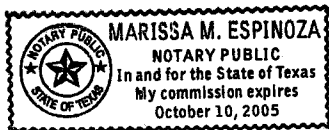
This instrument was acknowledged before me on this 31st day of January, 2005, by  
TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas  
corporation, on behalf of said corporation.

  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 31st day of JANUARY, 2005, by ED SANTAMARIA, President of MOUNTAIN VISTA BUILDERS, INC., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

*[Faint, illegible handwritten text]*

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 17th day of January, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **PACIFICA HOMES, INC.** hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE UNIT TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.



4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

By: Timothy C. Foster  
Timothy C. Foster, Vice President

APPLICANT:

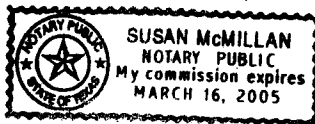
PACIFICA HOMES, INC.

By: Juan Jose Vazquez  
Juan Jose Vazquez, President

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

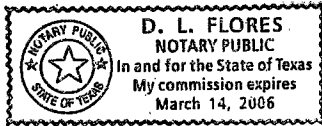
This instrument was acknowledged before me on this 17th day of January, 2005, by TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC., a Texas corporation, on behalf of said corporation.

Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 18 day of January, 2005, by JUAN JOSE VASQUEZ, President of PACIFICA HOMES, INC., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

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# DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 14th day of March, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **PEINADO FAMILY LIMITED PARTNERSHIP d/b/a QUALITY CRAFT HOMES**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE UNIT TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to

the anticipated completion of Subdivision improvements.

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

APPLICANT:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

PEINADO FAMILY LIMITED PARTNERSHI  
d/b/a QUALITY CRAFT HOMES

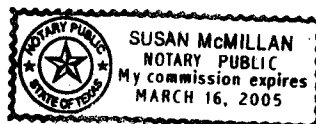
By: Timothy C. Foster  
Timothy C. Foster, Vice President

By: Kelly Peinado  
Kelly Peinado

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

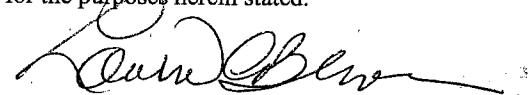
This instrument was acknowledged before me on this 14th day of March, 2005, by TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas corporation, on behalf of said corporation.

Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

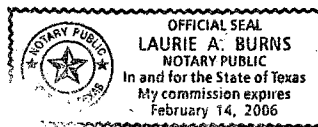
This instrument was acknowledged before me on this 21st day of March, 2005, by KELLY PEINADO of QUALITY CRAFT HOMES, for the purposes herein stated.



NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936



**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 31<sup>st</sup> day of March, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **RAKMR I, LTD.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE UNIT TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.


6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

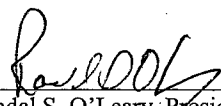
DEVELOPER:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

By:   
Douglas A. Schwartz, Vice President

APPLICANT:

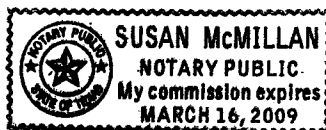
RAKMR I, LTD.  
A Texas Limited Partnership  
BY: RAKMR TEXAS, INC.  
A Texas Corporation  
Its General Partner

By:   
Randal S. O'Leary, President

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

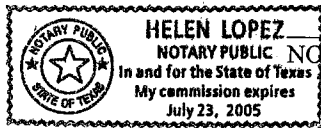
This instrument was acknowledged before me on this 31st day of March, 2005, by DOUGLAS A. SCHWARTZ, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas corporation, on behalf of said corporation.

  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 31<sup>st</sup> day of March, 2005, by RANDAL S. O'LEARY, President of RAKMR TEXAS, INC., a Texas corporation, on behalf of said corporation.



*Helen Lopez*

NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 1<sup>st</sup> day of April, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **XAVIER HOMES, INC.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE UNIT TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. Incomplete Subdivision Improvements. Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. Issuance of Building Permits. Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. Risk of Commencement. Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

**COPY**

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

By: Timothy C Foster  
Timothy C. Foster, Vice President

APPLICANT:

XAVIER HOMES, INC.

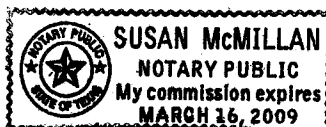
By: Javier S Corral  
Javier Corral, President

STATE OF TEXAS )

COUNTY OF EL PASO )

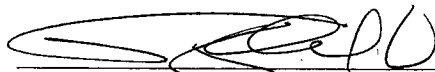
This instrument was acknowledged before me on this 1st day of April, 2005, by  
TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas  
corporation, on behalf of said corporation.

Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

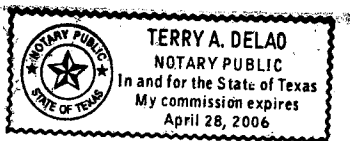
This instrument was acknowledged before me on this 14 day of April, 2005, by JAVIER CORRAL,  
President of XAVIER HOMES, INC., a Texas corporation, on behalf of said corporation.



NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936



**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 18<sup>th</sup> day of April, 2005, by and between **RANCHOS REAL IX, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **ZIA HOMES, INC.**, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **TIERRA DEL ESTE UNIT TWENTY SEVEN** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City Engineer of the City of El Paso.

2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility, and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

(a) an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

(b) a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

(c) Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision improvements.

4. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. Certificate of Occupancy. Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. Binding Effect. This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

APPLICANT:

RANCHOS REAL IX, LTD.  
BY: RANCHOS REAL DEVELOPERS, INC.  
ITS GENERAL PARTNER

ZIA HOMES, INC.

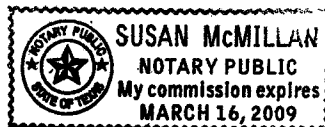
By: Timothy C. Foster  
Timothy C. Foster, Vice President

By: Ronald D. Costa  
Ronald D. Costa, President

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

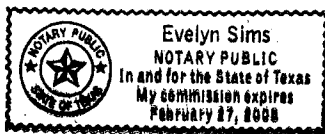
This instrument was acknowledged before me on this 18th day of April, 2005, by TIMOTHY C. FOSTER, Vice President of RANCHOS REAL DEVELOPERS, INC. a Texas corporation, on behalf of said corporation.

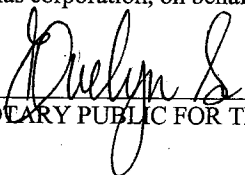
Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 19th day of April, 2005, by RONALD D. COSTA, President of ZIA HOMES, INC., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

RANCHOS REAL IX, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936